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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

MOOG INC.,

Plaintiff,

v.

SKYRYSE, INC., et al.,

Defendants.

CASE NO. 2:22-cv-09094-GW-MAR

**DEFENDANTS MISOOK KIM AND ALIN  
PILKINGTON'S REPLY IN SUPPORT OF  
JOINDER IN SKYRYSE, INC.'S MOTION  
TO STAY**

*[Declaration of Alyssa L. Titcher filed  
concurrently herewith]*

The Honorable George H. Wu

Hearing Date: April 13, 2023

Time: 8:30 a.m.

Courtroom: 9D

1   **A.   INTRODUCTION**

2           Plaintiff Moog Inc. (“Moog”) misrepresents Defendants Misook Kim’s (“Ms.  
3 Kim”) and Alin Pilkington’s (“Mr. Pilkington,” and collectively “Individual  
4 Defendants”) invocation of their Fifth Amendment privileges and the timeline of this case  
5 and its overlapping criminal investigation in order to gain every conceivable litigation  
6 advantage and to make the Court believe it does not have the discretion to order a stay in  
7 this matter. Contrary to Moog’s representations to the Court, the Individual Defendants  
8 have and are exercising their Fifth Amendment rights in this case. The Individual  
9 Defendants will also continue to assert their Fifth Amendment privileges over any  
10 deposition questions where the privilege applies as well as with respect to all remaining  
11 written discovery. Additionally, Moog incorrectly attempts to persuade the Court that  
12 there is no overlap between the criminal investigation and this case. This is simply not  
13 true and correspondence from the FBI makes clear that the criminal investigation and this  
14 case are nearly, if not completely, identical.

15           As set forth in the Individual Defendants’ Joinder to Skyrise, Inc.’s Motion to Stay  
16 (“Joinder”), six factors are considered in granting a motion to stay. (ECF 393 at 7.)  
17 When reviewing these factors, the Court has broad discretion to stay a civil action  
18 pending the outcome of criminal proceedings. *See, e.g., SEC v. Dresser Indus., Inc.*, 628  
19 F.2d 1368, 1375 (D.C. Cir. 1980). Moog conveniently ignores this guidance and instead,  
20 relies upon incendiary accusations that “Moog has discovered substantially more  
21 wrongdoing by Defendants” and the alleged “theft of over a *million* additional Moog  
22 files,” to distract from the fact that when the six factors are weighed—a stay is clearly in  
23 the interest of justice. (ECF 421 at 9.) The Individual Defendants respectfully request  
24 that the Court reject Moog’s Opposition as it lacks factual basis and demands an  
25 inequitable outcome without sufficient legal support.

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## 1 **B. ARGUMENT**

### 2 **1. The Individual Defendants Have Invoked Their Fifth Amendment** 3 **Privileges And Continue To Do So**

4 The Individual Defendants have asserted and continue to assert their Fifth  
5 Amendment privileges in this case as well as the parallel federal criminal investigation.  
6 It is disingenuous and misleading for Moog to falsely allege “[a]t bottom, the  
7 Defendants’ prejudice assertion is entirely premised on the hypothetical circumstance of  
8 the Individual Defendants asserting Fifth Amendment rights in this action, *which has not*  
9 *happened.*” (ECF 421 at 7-8.) As the government’s investigation pushes forward and  
10 Moog fuels that investigation with information from this case, the Individual Defendants  
11 continue to invoke their Fifth Amendment privileges.

12 Ms. Kim invoked her Fifth Amendment privilege on or about July 5, 2022 in  
13 response to a Grand Jury subpoena. (ECF 393-1 [Gelberg Decl.] ¶ 3.) Mr. Pilkington  
14 invoked his Fifth Amendment privilege in an email to Assistant United States Attorney  
15 (“AUSA”) Reema El-Amamy on July 8, 2022. (ECF 393-2 [Fiset Decl.] ¶ 4, Ex. 2.)  
16 The Individual Defendants also asserted their Fifth Amendment privileges in their  
17 Motion to Claw Back Electronic Devices. (ECF 229 [Claw Back Motion] *passim.*)

18 On March 10, 2023, Ms. Kim again invoked her Fifth Amendment privilege in  
19 correspondence with iDS regarding the Grand Jury Subpoena iDS received. (Titcher  
20 Decl. ¶ 2, Ex. 1.) Mr. Pilkington invoked his Fifth Amendment privilege in the same  
21 email chain just minutes after Ms. Kim. (*Id.*) The Individual Defendants affirmed their  
22 commitment to invoke their Fifth Amendment rights throughout the civil case. (ECF 393  
23 [Joinder to Motion to Stay].)

24 Additionally, mere days ago, on March 21, 2023, counsel for Moog acknowledged  
25 that the Individual Defendants were invoking their Fifth Amendment rights over all  
26 communications from iDS Device Nos. E0003, E0004, E0014, E0021, E0022 from  
27 March 7, 2019 to December 31, 2022. (Titcher Decl. ¶ 3, Ex. 2.) Thus, Moog’s assertion  
28 that the Individual Defendant’s invocation of their Fifth Amendment privilege is merely

1 speculative is not true and should be disregarded by the Court.

2       **2. The Individual Defendants’ Invocation Of Their Fifth Amendment**  
3       **Privileges Has Real Impacts On This Case**

4       While Moog attempts to persuade the Court that the Individual Defendants’  
5 invocation of their Fifth Amendment rights is merely “hypothetical,” the Individual  
6 Defendants’ actual Fifth Amendment invocation is complicating this litigation. It is  
7 slowing down the pace of litigation and will undoubtedly result in extensive motion  
8 practice if this case is not stayed. Moog and the Individual Defendants are currently  
9 having discovery disputes regarding the Individual Defendants’ Fifth Amendment  
10 invocation related to the electronic devices as is evident in Moog’s March 21 email.  
11 (Titcher Decl. ¶ 3, Ex. 2.)

12       Further, the Individual Defendants will not provide answers to discovery under the  
13 privilege. The Individual Defendants will assert their Fifth Amendment privileges over  
14 any deposition questions where the privilege applies as well as with respect to all  
15 remaining written discovery. Therefore, if this case proceeds and a stay is not enacted,  
16 the Individual Defendants will be forced to continue to invoke their Fifth Amendment  
17 privileges and the Individual Defendants as well as Defendant Skyrise, Inc. will be  
18 deprived of the ability to present a full defense and the case will not be decided on the  
19 merits, but instead by inferences drawn from the Individual Defendants’ invocations.  
20 This is not a fair and just outcome, but it is the outcome Moog sought when it referred  
21 these civil allegations to the Department of Justice.

22       **3. The Overlap Between The Criminal Investigation And This Civil Case**  
23       **Is Near Complete**

24       Moog states in its Opposition that “There is No Known ‘Overlap’” between the  
25 criminal and civil proceedings and that any assertion that there is overlap is “inherently  
26 speculative absent indictment.” (ECF 421 at 21.) This simply is not true. Documents  
27 produced by Moog in discovery clearly show that Moog and the FBI corresponded and  
28 shared information for months before the Individual Defendants were served with the

Grand Jury subpoenas. The Grand Jury Subpoenas served on the Individual Defendants direct compliance to FBI Special Agent Robert Shaw (“SA Shaw”)—the same agent who appears to be Moog’s contact. (ECF 393-1 [Gelberg Decl.] ¶ 2, Ex. 1; ECF 393-2 [Fiset Decl.] ¶ 3, Ex. 1.) Further, the FBI described the preservation letter as “related to the Moog v. Skyryse suit” (ECF 393-1 [Gelberg Decl.] ¶ 8; ECF 393-2 [Fiset Decl.] ¶ 7, Ex. 4), while AUSA El-Amamy told the Individual Defendants that they should look to this case to understand the government’s investigation. (ECF 393-1 [Gelberg Decl.], Ex. 2.)

When balancing the factors to enact a stay “[t]he most important factor at the threshold is the degree to which the civil issues overlap with the criminal issues.” Judge Milton Pollack, *Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 203 (S.D.N.Y.1989); *see also Volmar Distribs., Inc. v. New York Post Co.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993); *Wehling v. Columbia Broad. Sys.*, 608 F.2d 1084, 1089 (5th Cir. 1979) (“Although a three-year hiatus in the lawsuit is undesirable from the standpoint of both the court and the defendant, permitting such inconvenience seems preferable at this point to requiring plaintiff to choose between his silence and his lawsuit.”). Put simply, Moog knows that the parallel criminal investigation concerns the very same allegations that are at issue in the criminal case—the alleged theft of Moog trade secrets by individuals who were later employed by Skyryse. Because the overlap is substantial (to the point of being virtually identical), the Court should, in its discretion, grant a stay in this case until the conclusion of the criminal investigation.

#### **4. The Prejudice To The Individual Defendants Of Unstayed Civil Litigation Greatly Outweighs Any Potential Prejudice to Moog**

Moog fails to articulate any reason why a stay as to the Individual Defendants should not be granted except Moog’s desire to “advance its case, through proper discovery.” (ECF 421 at 24.) This is insufficient because “while a stay may cause some inconvenience and delay to [Plaintiff], protection of defendant’s constitutional rights against self-incrimination is the most important consideration.” *Sea Salt, LLC v. Bellerose*, No. 2:18-cv-00413-JAW, 2020 WL 2475874, at \*3 (D. Me. May 13, 2020)

(citations and internal quotations omitted); *see also Walsh Sec., Inc. v. Cristo Prop. Mgmt., Ltd.*, 7 F. Supp. 2d 523, 528 (D.N.J. 1998) (“A stay could push back the resolution of the civil case by several months or even years. Delays in civil cases are fairly common, however. Walsh has asserted no injury that is particularly unique.”).

Instead of arguing Moog would be prejudiced in some way other than potentially delayed discovery, Moog focuses on its claims that the Individual Defendants reasoning is insufficient for a stay. However, Moog cannot claim prejudice as to a stay vis-à-vis Ms. Kim and Mr. Pilkington. The Individual Defendants are currently unemployed because of this litigation. Unable to work in the field they spent decades of their careers building and facing financial ruin for themselves and their families in the present matter in order to invoke their Fifth Amendment rights and protect themselves in the imminent criminal case. They pose no threat to Moog’s business and the balance of justice demands this case be stayed during the pendency of the criminal investigation.

If a stay is not granted, the Individual Defendants will be forced to fight a two-front battle, in which Moog is feeding the government information. This is not a fair fight. The government is clearly benefiting from discovery it would not be afforded under Federal Rule of Criminal Procedure 16. (ECF 393-1 [Gelberg Decl.] ¶ 6.) *See Volmar Distribs.*, 152 F.R.D. at 39 (“Refusing to grant a stay might also expand the rights of criminal discovery beyond the limits of Rule 16(b) of the Federal Rules of Criminal Procedure, expose the basis of the defense to the prosecution in advance of trial, or otherwise prejudice the case.”) When weighing the two-front battle the Individual Defendants will be forced to fight unless a stay is enacted and the financial peril this civil action puts the Individual Defendants in as they continue to invoke their Fifth Amendment rights, a stay clearly outweighs any prejudice to Moog.

## **5. Moog’s Timeline Of Events Is Incorrect And Moog Continues To Feed The Government Information**

Moog instigated the criminal investigation and is now trying to obscure the timeline of events to make it appear that the Individual Defendants were aware of the

1 criminal investigation at a much earlier date. Try as they might to muddy the waters and  
2 obscure the clear sequence of events in this case, the timeline is clear, and  
3 communications produced in discovery show that Moog instigated the criminal  
4 investigation and continuously provided the government with information that the  
5 government uses in its criminal investigation. (ECF 393-1 [Gelberg Decl.] ¶ 8; ECF 393-  
6 2 [Fiset Decl.] ¶ 7, Ex. 4.)

7 The Individual Defendants provided their devices to iDS before they knew of the  
8 criminal investigation. As Moog acknowledges in its Opposition, the Individual  
9 Defendants produced the 23 electronic devices from the Stipulated TRO on April 1,  
10 2022. (ECF 421 at 10.) The Individual Defendants did not receive Grand Jury  
11 subpoenas and therefore knowledge of the criminal investigation until June 2022. (ECF  
12 393-1 [Gelberg Decl.] ¶ 2, Ex. 1; ECF 393-2 [Fiset Decl.] ¶ 3, Ex. 1.) Little did the  
13 Individual Defendants know that Moog had instigated the criminal investigation and had  
14 been providing the FBI with information for months. (ECF 393-1 [Gelberg Decl.] ¶ 6.)

15 Moog is wrong when it states that the Individual Defendants knew about the  
16 criminal investigation when they consented to Moog's unopposed request to provide  
17 copies of unredacted transcripts of the April 26 and May 5 Court conferences. (ECF 421  
18 at 10.) While the Grand Jury subpoenas received by the Individual Defendants were  
19 issued on June 10, 2022, the Individual Defendants were not actually served with the  
20 Grand Jury subpoenas until June 15, 2022. This is three days after the Individual  
21 Defendants agreed to release unredacted transcripts of the April 26 and May 5 Court  
22 conferences to the FBI, not knowing they were under criminal investigation at the time.

### 23 C. CONCLUSION

24 In light of the foregoing, the Individual Defendants respectfully request that the  
25 Court grant Skyrise's motion to stay these proceedings pending the outcome of the  
26 ongoing criminal investigation.



1 DATED: March 30, 2023

HALPERN MAY YBARRA & GELBERG LLP

2  
3 By: /s/ Alyssa L. Titcher  
4 ALYSSA L. TITCHE

5 Attorneys for Defendant  
6 MISOOK KIM

7 DATED: March 30, 2023

ZWEIBACK, Fiset & ZALDUENDO LLP

8  
9 By: /s/ Scott D. Tenley  
10 SCOTT D. TENLEY

11 Attorneys for Defendant  
12 ROBERT ALIN PILKINGTON

13 **ATTESTATION**

14 Pursuant to Local Rule 5-4.3.4(a)(2), I hereby attest that all signatories listed  
15 above, and on whose behalf the filing is submitted, concur in the filing's content and  
16 have authorized the filing.  
17

18 DATED: March 30, 2023

By: /s/ Alyssa L. Titcher  
19 ALYSSA L. TITCHE  
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